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10 Attorneys for Plaintiff
11 POINT BUCKLER CLUB, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

POINT BUCKLER CLUB, LLC,

Petitioner and Plaintiff,

v.

BRUCE H. WOLFE, Executive Officer of the
California Regional Water Quality Control Board,
San Francisco Bay Region; CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, SAN FRANCISCO BAY REGION;
and DOES 1 through 20;

Respondents and Defendants.

No. FCS046410

DECLARATION OF JOHN D. SWEENEY
IN SUPPORT OF EX PARTE
APPLICATION

Date: December 29, 2015
Time: 9:30am
Dept.: 3
Hon. Harry S. Kinnicutt

I, John D. Sweeney, declare as follows:

1. I am manager of Point Buckler Club, LLC (the "Club"). I have personal knowledge of the facts in this declaration, and if called as a witness could competently testify to them.

2. Duck clubs use levees to maintain control over water levels in the duck ponds. An aerial photograph from 1948 shows that Point Buckler was ringed by a levee at that time. Attached as Exhibit 1 to this declaration is an accurate copy of an aerial photo of Point Buckler that I obtained from the website historicaerials.com showing the island in 1948. It is fair to conclude, from this photo alone, that the island was being used as a duck club at that time. Conversations with previous owners of the island confirm that it was used as a duck club for many decades.

1 3. Staff of the Bay Conservation and Development Commission ("BCDC") provided me
2 with an "individual management plan" (the "Plan") dated 1984 for Point Buckler, which was then
3 called the "Annie Mason Point Club". Attached as Exhibit 2 to this declaration is an accurate copy
4 of the Plan. BCDC staff reported that the Plan was certified.

5 4. In 2014, I personally did work (the "Work") to maintain and repair the levee ringing
6 the island. I understood from the previous owner that the levee maintenance was supposed to be
7 done, and was not aware of the need for additional approvals. I dug out material from an artificial
8 ditch inside the levee and placed the material on the existing levee. Some material was placed where
9 the levee had been breached, and (where part of the levee had eroded away) on solid ground inside
10 the former levee location. I repaired one of two tide gates. The Work stopped in September 2014,
11 when the Club learned that there were regulatory objections to the Work. The Club would like to do
12 the additional work necessary for a fully functioning duck club, including the repair of the other tide
13 gate, discing the ponds, planting the vegetation that would provide food for ducks and other
14 waterfowl, and otherwise restoring the duck ponds and waterfowl habitat. However, the Club does
15 not intend to proceed with this work unless the issues raised by the Order have been resolved.

16 5. Since the fall of 2014, the Club has been discussing the situation with several
17 regulatory agencies, including BCDC, the U.S. Army Corps of Engineers (the "Corps"), and the U.S.
18 Environmental Protection Agency ("EPA"). The agencies have been invited to tour the island, and
19 have accepted the invitation. The Corps has advised the Club that an "after the fact" permit could be
20 issued for the Work, and the Corps accepted an application for that permit. None of the agencies,
21 other than respondents and defendants in this action ("Defendants"), have taken enforcement action.

22 6. On September 11, 2015, a year after the Work stopped, Defendants issued cleanup
23 and abatement order No. R2-2015-0038 (the "Order"). Attached as Exhibit 3 to this declaration is an
24 accurate copy of the Order and its transmittal letter and attachments. No hearing was held before the
25 Order was issued.

26 7. On September 18, the Club requested a hearing. Attached as Exhibit 4 to this
27 declaration is an accurate copy of that request.

1 8. On September 23, Defendants denied this request. Attached as Exhibit 5 to this
2 declaration is an accurate copy of that denial.

3 9. Even though the water level in the channels and ditches is now maintained near high
4 tide, the island is dry. Virtually all of the land is firm enough so that motor vehicles can be driven
5 across it.

6 10. The Club was not present, or even aware of, those meetings in which the prosecution
7 team convinced Mr. Wolfe to issue the Order.

8 11. Undoing the Work has a cost in the hundreds of thousands of dollars. Mitigation
9 banks charge approximately \$100,000-200,000 per acre. The total cost of complying with the Order
10 could exceed \$1 million. Costs of this magnitude are beyond the financial assets of the Club, and
11 threaten the Club's existence.

12 12. As part of the Work, the levee and tide gate were repaired, so that water can now be
13 let into the small channels and artificial ditch on the rising tide, and held within the levee at an
14 elevation near the high tide. These improvements allow the small channels and artificial ditches to
15 function as small ponds, thereby providing a modicum of habitat for ducks and other waterfowl.
16 There is no evidence of any harm caused by the creation of these small ponds. Most of the island is
17 above high tide, and is not affected by the presence or absence of tidal flow.

18 I swear under penalty of perjury under the laws of the State of California that the statements
19 in this declaration are true and correct.

20 DATED: December 28, 2015

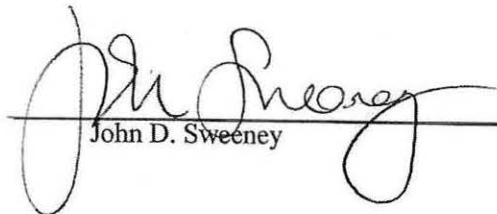
21
22 
23 John D. Sweeney
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EXHIBIT 1



EXHIBIT 2

CLUB #801

ANNIE MASON POINT CLUB

RECEIVED
NOV 15 1984

LAND USE SUMMARY

Managed wetland	30 ac.
Upland area	6 ac.
Tule berm	15 ac.
TOTAL	51 ac.

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

PRESENT CLUB CONDITIONS

WATER MANAGEMENT

Annie Mason Point Club is a small lone club located on Buckley Island. It is contained within a single levee surrounded by Grizzly Bay to the north and Suisun Cutoff to the south. Structure A on the east side of the club functions as the main flood gate and brings water into the club via a perimeter ditch system. A system of interior ditches running from south to north further distributes water to the pond. Structure B is used to drain the club into Grizzly Bay. Two small check dams (C and D) are located in the perimeter ditch. These structures aid in circulation by putting a head on the inlet water and forcing it to circulate across the club in a south to north direction. Removing the boards in the dam enables the ditch to drain.

VEGETATION

An on-club survey in 1976 found the club to be composed predominantly of olney and hardstem bulrush in the lower areas and saltgrass in the higher areas. The 1978 CA Dept. of Fish and Game aerial survey reported tule growth intermixed with the above vegetation. None of these plants has a relatively high use and selection value for waterfowl.

Olney and hardstem bulrush are both sod forming perennials which grow along sloughs and in ditches containing water most of the year. They will invade ponds which are shallowly flooded year round and are indicative of fairly fresh water conditions. Tules are also common in permanent ponds. Their increase was probably due to the club's lack of water control at the time.

SUMMARY

Prior to 1978, Annie Mason Point Club's vegetation largely consisted of non--waterfowl food plants. This was likely due to the club's lack of water control at the time. Since then, the situation has greatly improved and the club reports that it now has the water control structures and tight levees necessary for proper water management.

FLOOD/DRAIN EVALUATION

Due to limited access, an elevation survey was not done for this club. That being the case, the club's flood and drain capability could not be determined. However, using some assumptions, it is apparent that as the ponded area is very small, gates A and B would likely have to be only 24" in diameter to service this club effectively. Although structure B, the drain gate, must be set low enough to provide subsurface drainage of the pond.

CLUB IMPROVEMENTS

WATER MANAGEMENT

Needed Improvements: It is, first of all, necessary that the club follows a

regular program of water management; in this case the alkali bulrush program is recommended to promote such growth as well as fat hen and brass buttons. Considering the generally poorer quality water in Suisun Bay, effective spring leach cycles performed within 30 days are required to establish and maintain suitable habitat.

Proper water control necessitates inspection and maintenance of levees, ditches, and water control structures. Ditches need to be kept clear of vegetation blockages or silt build-ups to allow circulation and drainage. For effective drainage, ditches should be at least 2.5 ft. deeper than the average pond bottom elevation at the controlling tide gate, sloping to 1.5 ft. deep at the most remote point in the pond. Water control structures should also be kept in working order. Levees require frequent inspection and attention to prevent major breaks from occurring. See the enclosed list of standard recommendations for more information on the maintenance and repair of water control facilities.

VEGETATION MANAGEMENT

Needed Improvements: The dense growth of undesirable vegetation in the pond needs to be reduced by burning and/or discing followed by flooding according to the water management schedule. Removing the old vegetation and turning over the soil provides a seed bed for the establishment of new vegetation which is more preferred by waterfowl.

Emergent pond vegetation should be mowed to create open pond areas which are attractive to over-wintering waterfowl in the Suisun Marsh. The extent and pattern of mowing is left to the desires of the club. Close-cutting of tules and olney bulrush prior to fall flooding is an effective method of setting back their growth.

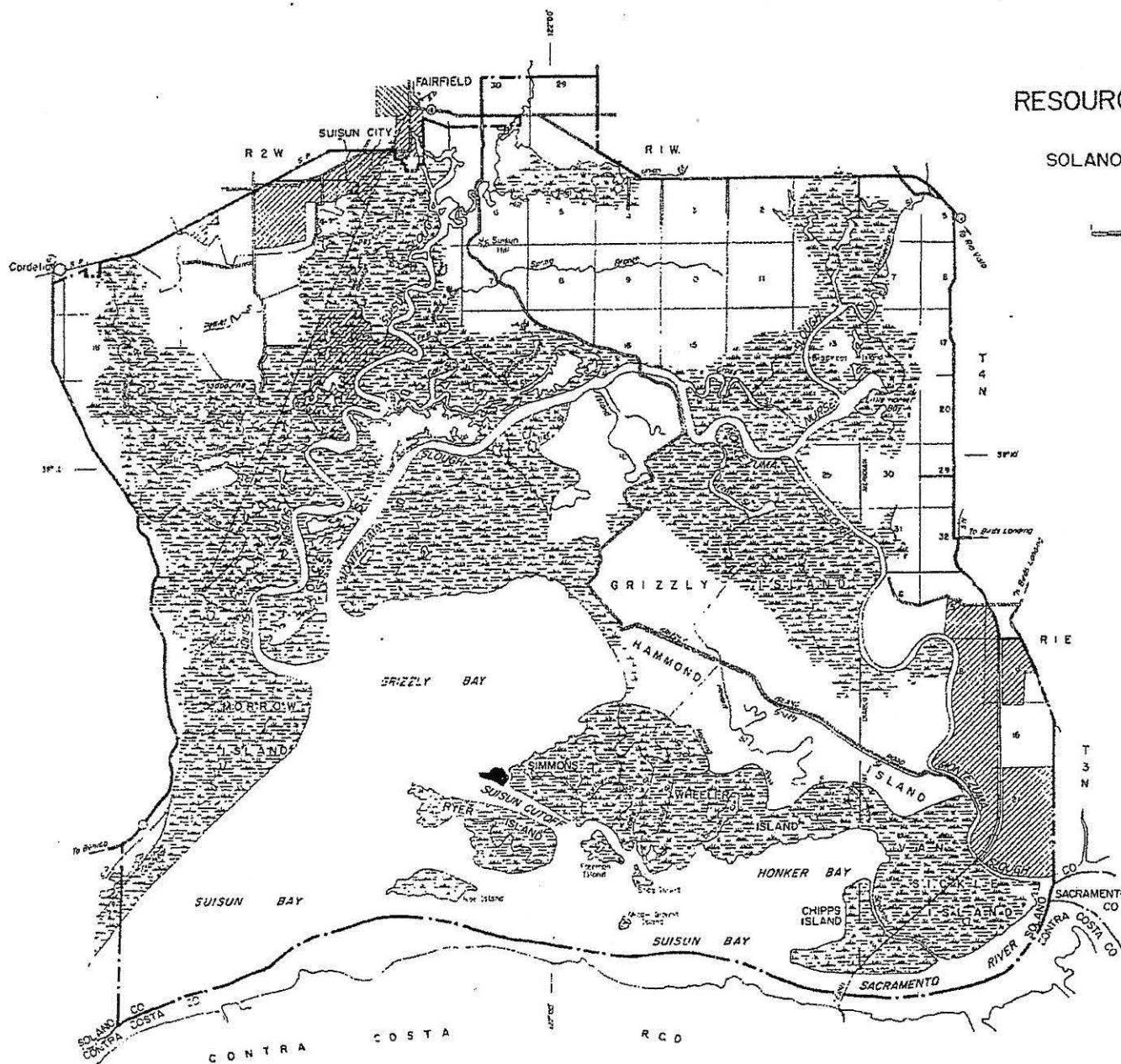
Levee vegetation should be mowed, as necessary, to facilitate access for maintenance reasons. This should be done after June 1st to lessen disruption of pheasant and waterfowl nesting.

SUISUN
RESOURCE CONSERVATION
DISTRICT
SOLANO COUNTY, CALIFORNIA
OCTOBER 1979

SCALE 1:135,000
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



LEGEND
Excluded Area
District Boundary



Source:
Base map prepared by SCS, WTRC, from USGS 1:24,000 scale.
U.S. DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE

SUISUN R.C.D. (1981) CAL. M7-PI - 17659

SOIL and CAPABILITY MAP SUMMARY

Date: _____

Effective Depth	Soil Profile			Average Slope in %	Erosion Status	Suitable Land Uses or Crops	Limiting Factors or Remarks
	Texture		A.W.C.* Inches				
	Surface	Subsoil					
+60"	clayey muck	clayey muck	14-15"	0-1%	slight	1) Wildlife, wet-land habitat. 2) Recreation.	1) Rooting depth restricted by high water table. 2) Requires drainage and leaching of soil salts for proper management. 3) Levees and tidegates are necessary for water control. 4) Only salt tolerant vegetation should be managed for.
-----	variable	-----	1-2"	0-1%	NONE	1) Wildlife wet-land habitat.	1) Strongly saline land type. 2) Mud flats, subject to tidal inundation.

Available Water Holding Capacity

SCS-CONS-15
OCTOBER 1974

SOIL MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator _____
County Soiano State CA
Soil survey sheet(s) or code nos. _____ Approximate scale 1"=660'
Prepared by U.S. Department of Agriculture, Soil Conservation Service cooperating
with Suisun Resource Conservation District





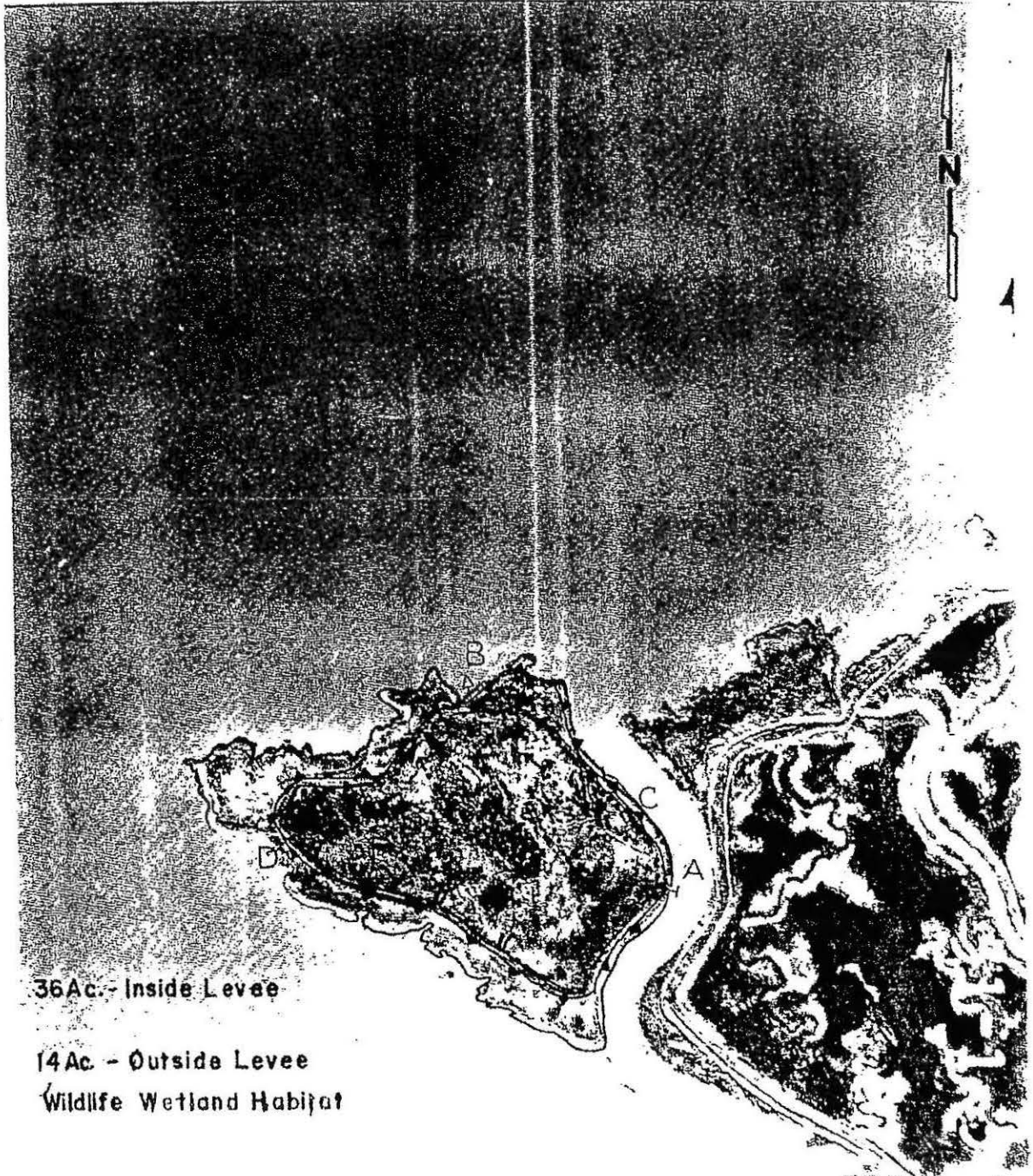
CONSERVATION PLAN MAP

Prepared by SOIL CONSERVATION SERVICE * UNITED STATES DEPARTMENT of AGRICULTURE
cooperating with

OWNER
OPERATOR

DATE
JUL 68
PHOTO NO

ACRES



SCS-CONS-16
OCTOBER 1974

CONSERVATION PLAN MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Taylor, James F. Operator _____
County Solano State CA Date _____
Approximate acres 51.51 Approximate scale 1"=660'
Cooperating with Suisun Resource Conservation District _____
Plan identification 801 Photo number _____
Assisted by _____ USDA Soil Conservation Service

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RECOMMENDED MANAGEMENT FOR ALKALI BULRUSH

Alkali Bulrush has been found to have the highest overall use and selection values of the 35 food species records (Mall, 1969) in the Suisun Marsh.

The following Water Management Schedule has been developed to produce dominant stands of alkali bulrush and subdominant stands of other important waterfowl food plants such as fat-hen and brass buttons. This management practice somewhat retards the growth of other less desirable plants such as tules, cattails, pickleweed, and saltgrass. To establish stands of alkali bulrush from seed in areas where it does not presently exist, the procedures set forth in the Department of Fish and Game bulletin entitled "Propagating Alkali Bulrush" should be followed.

It is important to remember that the plant composition of the Suisun Marsh is related more to water management than any other single factor (Mall, 1969). The length of soil submergence and levels of salinity in the soil are factors which can be managed to maximize the production of waterfowl food plants. The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of alkali bulrush seed. For a more complete and detailed discussion of the Water Management Schedule, see the California Department of Fish and Game publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq. at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

HUNTING SEASON

- September Begin filling ditches in September only if water can be circulated in the ditches without flowing into the ponds. The ditches must have a minimum width (18") and depth (24") to allow adequate circulation of the water. Do not flood any pond surface.
- October Flood the ponds as rapidly as possible to the desired shooting depth of 8-12 inches. Maintain this water level for the duration of the duck hunting season. Circulate water through the ponds with inlet and outlet gates set to allow maximum flow through all ponds during the season. The Solano County Mosquito Abatement District usually authorizes the flooding of ponds three weeks prior to the opening of the waterfowl season. Landowners will be notified each year of the exact date.
- Nov-Dec Continue to circulate.

LEACHING CYCLES

- January Begin draining ponds at or before the end of the hunting season. Continue to drain the ponds until the water level in the ditches is 12" below the pond bottoms. This should be accomplished within 20 days. If this level is reached in less than 20 days, begin to reflood immediately.
- February The first drain should be completed by early February depending on rainfall and delta outflow conditions.
- Flood: Flood the fields and ponds to shooting depth, (approximately 8-12"). This should be accomplished within 10 days. Many clubs can flood much faster than this. If shooting level is reached sooner than 10 days, begin to drain immediately. If there is a problem lowering the water to a level 12" below the pond bottoms within 20 days, use any days saved during the flooding period to increase the length of the drain period. Flooding and draining should be accomplished within 30 days.
- Drain: Repeat the drain as before making sure that the water level in the ditches has been drawn down 12" below the pond bottoms.
- March-April Repeat Flood-Drain Cycle. Flood to 1/2 shooting level (approx. 4-6"). This cycle must be completed as quickly as possible. For mosquito prevention, it is important that the pond bottom not be allowed to dry out prior to reflooding for the set-set cycle. Ideally this drain cycle should be completed and ponds reflooded and water levels stabilized and circulating prior to April 1. If significant number of mosquitoes are produced on clubs draining and flooding during April, aerial spraying by Solano County Mosquito Abatement District may be necessary at the expense of the club.

SEED-SET CYCLE

April-June

As soon as 2 leaching cycles have been completed, flood to 1/2 shooting level (approx. 4-6"). Stabilize at this level and continue circulating until summer drainage. Be sure to maintain a constant water level in the ponds for the entire cycle. It has been shown that in order to achieve a good seed-set bulrush stands must be flooded during this period. As soon as bulrush has seed-set or not later than June 1, begin final drainage.

MAINTENANCE

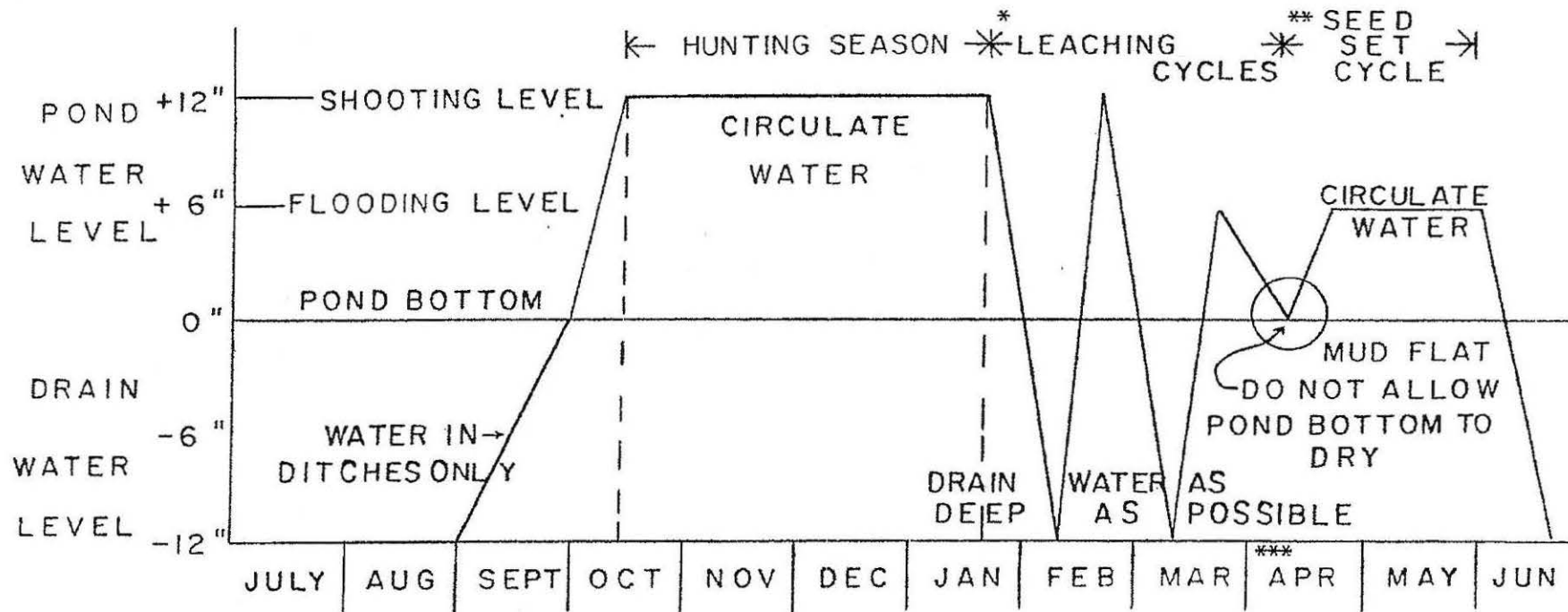
Summer

The summer drying period will retard the invasion of undesirable plants and will allow necessary maintenance and field work.

September

Mow to create open water areas. For a discussion of mowing techniques, see the Department of Fish and Game Bulletin: "Waterfowl Habitat Management in the Suisun Marsh".

ALKALI BULRUSH WATER MANAGEMENT SCHEDULE



* The leaching cycles are calculated using a 10 day flood and 20 day drain period, however, many clubs can accomplish one total flood and drain cycle in less than 30 days. The flushing cycles should be completed as fast as possible, however, do not cut short the 20 day drain period unless the water level in the ditches 1' below pond bottom.

** Ideally, stabilized water levels of the seed set cycle should be accomplished before April 1.

*** Any duck club planning to fluctuate pond water levels in April must notify the Solano County Mosquito Abatement District of their intentions. April is the beginning of the mosquito breeding season. Extra care is essential to insure that the pond bottoms are not allowed to dry out during April prior to reflooding for the seed-set cycle.

RECOMMENDED MANAGEMENT FOR FAT HEN

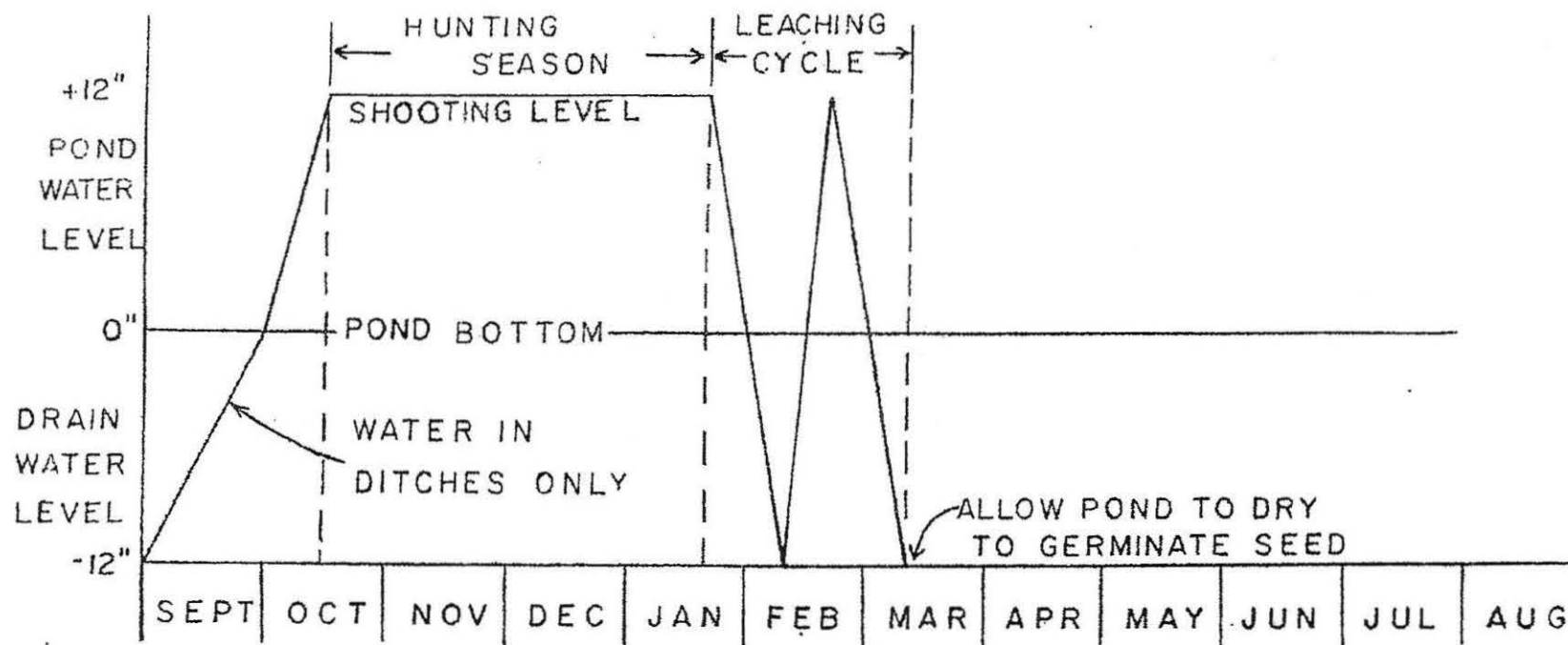
Fat hen is an annual herb that is a prolific seed producer and preferred waterfowl food plant. It grows best during the spring and summer on disturbed soils. Fat hen does not compete well with perennials and will require discing every 4-5 years in order to maintain a dominant stand. Fat hen is recommended on clubs that are relatively level, that have firm, well-drained soils and that have a manager to insure efficient Water Management. The following Water Management Schedule has been developed to produce a dominant stand of fat hen, while suppressing less desirable plants such as tules, cattails and saltgrass. This schedule may support additional stands of brass buttons. Plant composition in the Suisun Marsh is related more to Water Management than any other single factor (Mall, 1969). The length of the soil submergence and salinity are factors which can be managed to maximize the production of waterfowl food plants.

The schedule as presented here, is meant to be used as a guide to maintain optimum conditions for the production of fat hen seed. For a more complete and detailed discussion of the Water Management Schedule, see the Department of Fish and Game Publication "Waterfowl Habitat Management in the Suisun Marsh".

NOTICE:

The SCMD has participated in the preparation of this management plan and endorses this Water Management Schedule to minimize the production of mosquitoes. This plan is suitable for use on private duck club land and all other lands owned by public agencies managed as waterfowl habitat, and in normal weather cycles will limit the production of mosquitoes if water levels are managed properly. However, if adverse variations in water levels occur, SCMD may take action to abate any production of mosquitoes pursuant to the procedures set forth in the California Health and Safety Code Sections 2274 et seq. at the property owners expense whenever larvae and adult mosquitoes are found to be present in sufficient densities to warrant control procedures.

FAT HEN WATER MANAGEMENT SCHEDULE



WETLANDS MAINTENANCE MANAGEMENT REPORT
SUISUN RESOURCE CONSERVATION DISTRICT

Date: 1-29-90

Club Name: ANNIE MASON Pt.

Owner or

Acres in

Ownership No. 801

Manager Jim TAYLOR

Ownership 51.5

Phone: (415) 758-209

*NOTE: YOU MUST SUBMIT A MAP OF YOUR PROPERTY SHOWING WORK LOCATIONS. SUITABLE MAPS ARE AVAILABLE FROM ASSESSOR'S OFFICE.

Type of Work	# of Units	Size or Acreage	Cubic Yards	Linear Feet	Work Schedule		Comments
					Start	Complete	
Clearing Ditches	XXXXX	XXXXXXX	1000	Approx. 1200	AS SOON AS POSSIBLE	Oct. 1	1) upon Existing Levee
Construct New Ditches	XXXXXX						1)
Interior Levee Repair	XXXXXX	XXXXXXX	2000	500'	"	"	2) From Existing Ditch
Exterior Levee Repair	XXXXXX	XXXXXXX	2000	750'	"	"	2) Suisun Cut + ANNIE M Suisun Bay
Road Maintenance	XXXXXX	XXXXXXX					2)
Grading Pond Bottoms	XXXXXX						
New Culverts			XXXXXXX	XXXXXXX			
Repair-Replace Culverts			XXXXXXX	XXXXXXX			
Water Control Structures			XXXXXXX	XXXXXXX			3)
Install New Blinds		XXXXXXX	XXXXXXX	XXXXXXX			
Relocate Blinds		XXXXXXX	XXXXXXX	XXXXXXX			
Other Work (Specify)							

1) State where material will be placed

2) State source of material

3) State type of structure

N

GRIZZLY BAY

SIMMONS ISLAND

ANNIE MASON

SLOUGH

Interior
Levee Repair

BUCKLER PT.
51.5 ACRES

Interior
Levee Repair

Interior
Levee Repair

Extension Levee
Repair

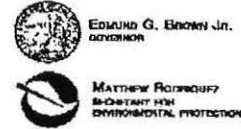
Interior
Levee Repair

Extension
Levee Repair

SUISUN CUT OFF



EXHIBIT 3



San Francisco Bay Regional Water Quality Control Board

Sent via certified mail and electronic mail

September 11, 2015
CIWQS Place ID 816826

Cert. Mail #7014 2870 0001 4626 3182

Point Buckler LLC/John Sweeney
c/o Miller Starr Regalia
1331 N. California Blvd., 5th Floor
Walnut Creek, California 94596
Attn: Wilson Wendt, wilson.wendt@msrlegal.com

Subject: Cleanup and Abatement Order No. R2-2015-0038 for Unauthorized Levee Construction Activities at Point Buckler Island in the Suisun Marsh, Solano County

Dear Mr. Sweeney:

Enclosed with this letter is Cleanup and Abatement Order No. R2-2015-0038 (Order) for unauthorized levee construction activities at Point Buckler Island located in the Suisun Marsh, Solano County.

As described in finding 14 of the Order, the Regional Water Board is entitled to recover reasonable costs actually incurred by staff from responsible parties to oversee cleanup of unauthorized activities and/or discharges that have adversely impacted or threaten to affect waters of the State. To assure that sufficient Regional Water Board staff resources are available to conduct the necessary reviews and approvals, we intend to include this site in this Region's Site Cleanup Program (SCP) Cost Recovery Program, more fully described in the attached Reimbursement Process for Regulatory Oversight enclosure. Pursuant to provision 8 of the Order, you are required to acknowledge in writing your intent to reimburse the State for cleanup oversight work by returning the Acknowledgment Letter (Attachment 3), or its equivalent, within 14 days of the date of the Order.

Estimate of Work to be Performed and Expected Outcome

Regional Water Board staff will be actively overseeing the investigation and cleanup of this site. Given this, Regional Water Board staff estimate that the following work will be performed for the subject site during State fiscal year 2015 - 2016, ending June 30, 2016: 1) Review work plans; investigation reports; corrective action plans; and associated correspondence from the discharger, its consultant, and/or interested parties; 2) Conduct site inspections following up on the technical reports and Order compliance; 3) Conduct meetings regarding the site on issues relevant to corrective

Dr. James E. Young, Chair | Bruce M. Wooten, Executive Officer

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

actions; and 4) Discuss issues related to the site and prepare written correspondence between the Regional Water Board and interested parties.

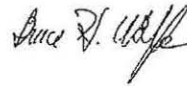
Billing Rates

Attachment 1 provides a detailed description of the billing procedure. Attachment 2 lists the billing rates for employees expected to engage in the work or services for your site/facility. We estimate that 100 hours will be required in the oversight of the site for the remainder of the State's fiscal year, which ends June 30, 2016. This is merely an estimate. The actual time needed will depend on the nature and extent of the necessary oversight. The name and classification of employees making charges will be listed on invoices. The average billing rate is approximately \$150 per hour. An estimate for any necessary work after June 30, 2016, will be provided in late spring 2016.

Contact Information

If you have any questions, please contact Agnes Farres of my staff at (510) 622-2401 or by e-mail to agnes.farres@waterboards.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe,
o=SWRCB, ou=Region 2,
email=bwolfe@waterboards.ca.gov, c=US
Date: 2015.09.11 14:29:05 -07'00'

Enclosures: Cleanup and Abatement Order No. R2-2015-0038
Attachment 1 – Reimbursement Process for Regulatory Oversight
Attachment 2 – Billing Rates
Attachment 3 – Acknowledgement Letter

Copy by email:

John Sweeney, john@spinnerisland.com
U.S. Environmental Protection Agency
Bill Lee, lee.bill@epa.gov
Corps, SF Regulatory Branch
Katerina Galacatos, Katerina.Galacatos@usace.army.mil
Jane Hicks, jane.m.hicks@usace.army.mil
California Department of Fish and Wildlife
Jim Starr, Jim.Starr@wildlife.ca.gov
San Francisco Bay Conservation and Development Commission
Maggie Weber, maggie.weber@bcdcc.ca.gov

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2015-0038

POINT BUCKLER LLC
SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. Point Buckler LLC (Discharger) owns approximately 51 acres of land at Point Buckler Island located off the western tip of Simmons Island in the Suisun Marsh, Solano County (Site). The Site was historically managed for ducks, but, over a period of decades without management, tidal circulation was naturally restored to the Site's several tidal marshes.
2. The Discharger constructed a levee at the Site without proper authorizations, certifications, and/or permits from the Regional Water Board. The Discharger's levee construction activities included construction of a levee around the perimeter of the Site resulting in the diking off of the tidal channels located on the northeast, northwest, and southwest portions of the Site. Based upon photographic evidence and reports from Bay Conservation Development Commission (BCDC) and California Department of Fish and Wildlife (CDFW) staff, the Discharger has adversely impacted tidal marsh vegetation.
3. The Site's adversely impacted tidal marshlands constitute waters of the State and United States.
4. The Regional Water Board's Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) defines the existing and potential beneficial uses for waters within the Region. The beneficial uses of any specifically identified water body generally apply to all its tributaries. The Basin Plan designates the following existing and potential beneficial uses for Suisun Bay: industrial service supply, industrial process supply, commercial and sport fishing, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, contact and noncontact water recreation, and navigation.
5. Beneficial uses present at the Site that were adversely impacted by the Discharger's unauthorized levee construction activities include estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat.
6. The Site is potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse. The adverse impacts from levee construction activities may include impacts that resulted because some of the work was conducted outside appropriate work windows for these protected species.
7. Suisun Marsh is identified as an impaired water body pursuant to federal Clean Water Act (CWA) section 303(d) for mercury, nutrients, organic enrichment/low dissolved

oxygen, and salinity/total dissolved solids/chlorides. The circulation of waters through tidal marsh generally provides improved dissolved oxygen conditions and maintains water chemistry balance, such as the proper range of salinity. Cutting off tidal circulation to the Site's tidal marshes has disrupted the marshes' ability to provide this natural water quality benefit.

8. On November 19, 2014, BCDC and CDFW staff inspected the Site and reported that the Discharger's unauthorized levee construction activities cut off crucial tidal flow to the interior of the Site, thereby drying out the Site's former tidal marsh areas and destroying existing and potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse.
9. The Discharger's unauthorized levee construction activities at the Site have unreasonably affected or threaten to adversely affect water quality and beneficial uses by filling the tidal drainage channels at the Site, thereby cutting off tidal circulation to the Site's interior tidal marsh habitat and destroying existing and potential habitat for special status species including Chinook Salmon, Delta Smelt, California Clapper Rail, and Salt Marsh Harvest Mouse.
10. The Discharger's unauthorized levee construction activities at the Site are in violation of California Water Code (CWC) sections 13260 and 13264, CWA sections 401 and 402, and the Basin Plan as described below:
 - a. CWC section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, shall file with the appropriate Regional Water Board a Report of Waste Discharge (ROWD). CWC section 13264 further provides that no person shall initiate any new discharge of waste, or make any material changes in any discharge, prior to the filing of the ROWD required by CWC section 13260. The Discharger has not filed a ROWD with the Regional Water Board for the levee construction activities at the Site described above, which could adversely affect the quality of waters of the State. Accordingly, the Discharger is in violation of CWC sections 13260 and 13264.
 - b. CWA section 401 specifies that any applicant required to obtain a federal license or permit to conduct any activity that may result in a discharge into navigable waters must obtain a certification from the state in which the discharge originates. Title 23 of the California Code of Regulations, section 3855, requires that "an application for water quality certification shall be filed with the regional board executive officer." The Discharger has not filed an application for a CWA section 401 Water Quality Certification for the levee construction activities that resulted in a discharge of fill to waters of the State and United States. Accordingly, the Discharger is in violation of CWA section 401.
 - c. CWA section 402 established a National Pollutant Discharge Elimination System (NPDES) permit program and specifies that a NPDES permit is required for any stormwater discharges associated with construction activity, including clearing,

grading, and excavation resulting in land disturbance of one acre or more. The Discharger has not filed a Notice of Intent to enroll for coverage under the State's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) for the levee construction and other land disturbance activities conducted at the Site. The levee construction and other land disturbance activities conducted by the Discharger at the Site have collectively disturbed greater than one acre of land. Accordingly, the Discharger is in violation of CWA section 402.

- d. Chapter 4, Table 4-1 of the Basin Plan prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Discharger's unauthorized levee construction activities have resulted in the discharge of earthen fill into the site's tidal channels and around the perimeter of the Site in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. Additionally, cutting off tidal circulation into the Site's interior tidal marshes has unreasonably affected or threatened to affect water quality and beneficial uses. Accordingly, the Discharger's levee construction activities at the Site are in violation of the Basin Plan.
11. CWC section 13304 requires any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Resources Control Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
12. Based on the above findings, the Regional Water Board finds that the Discharger has caused or permitted waste to be discharged or deposited where it has been discharged into waters of the State and created or threatens to create a condition of pollution. As such, pursuant to CWC sections 13267 and 13304, this Order requires the Discharger to submit technical reports to enable the Regional Water Board to understand the extent, scope, and character of the discharge and its impacts and requires the Discharger to undertake corrective action to clean up the waste discharged and abate its effects.
13. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the California Environmental Quality Act, pursuant to section 15321(a)(2) of Title 14 of the California Code of Regulations.

14. Pursuant to CWC section 13304, the Discharger is hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to CWC sections 13267 and 13304, that the Discharger shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

A. Prohibitions

1. The discharge of fill material that will degrade, or threaten to degrade, water quality, or adversely affect, or threaten to adversely affect existing or potential beneficial uses of waters of the State is prohibited.
2. Removal of tidal marsh vegetation in a manner that adversely impacts or threatens to adversely impact water quality or beneficial uses in any water of the State is prohibited.
3. This Order does not allow for the take, or incidental take, of any special status species. The Discharger shall use the appropriate protocols, as approved by CDFW and the U.S. Fish and Wildlife Service, to ensure that activities do not impact the Beneficial Use of the Preservation of Rare and Endangered Species or violate the California or federal Endangered Species Acts.

B. Provisions

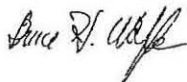
1. **No later than October 16, 2015, the Discharger shall submit, acceptable to the Regional Water Board Executive Officer, the following:**
 - a. A technical report providing a description of all levee construction activities, boat dock construction, and any other discharges of fill material or structures into waters of the State. The technical report shall also describe all grading and vegetation removal activities the Discharger has conducted at the Site. This technical report shall describe the nature and extent of these activities by means such as, but not limited to, providing a map illustrating the extent of these activities, and calculations quantifying the amount of fill material placed into waters of the State, the acreage of all channel, marsh, or other wetland vegetation removed or otherwise adversely impacted at the Site, and the linear distance (in feet) of tidal channels impacted by the levee construction activities. The impact assessment shall be performed by a qualified professional with expertise in tidal marsh habitat and shall, at a minimum, include a description of the pre-disturbance tidal channel morphology, soil conditions, hydrology, and characterization of the tidal marsh habitat impacts and loss, as well as documentation (e.g., aerial photographs, photographs, reports, topographic maps or drawings) showing the condition of the Site prior to the recent levee construction activities. The results of this impact assessment shall serve as the basis for the Corrective Action Workplan described below.

- b. Description of any permits and other authorizations obtained from local, State, and federal agencies and local or regional districts for any filling, grading, vegetation removal, levee and structure construction activities, or other activities that have disturbed land or water features at the Site since the Discharger acquired it.
- 2. No later than November 1, 2015, the Discharger shall submit a Corrective Action Workplan, acceptable to the Regional Water Board Executive Officer, that includes the following:**
- a. A workplan proposal for corrective actions designed to: (a) restore tidal circulation to all of the tidal channels and interior marsh habitat that existed prior to the Discharger's levee construction activities; and (b) provide compensatory mitigation habitat to compensate for any temporal and permanent impacts to the functions and values provided by the impacted wetlands, tidal marshlands, and drainage channels impacted by the Discharger's levee construction, vegetation removal, and other Site development activities. This Corrective Action Workplan shall include success criteria and performance standards for assessing whether the corrective actions are achieving the intended water quality and habitat restoration goals, including identification and justification for the proposed targeted native plant species, soil and hydrologic conditions, and identification and description of any reference sites utilized. Performance standards shall designate the final habitat success criteria. The Corrective Action Workplan shall include an implementation time schedule acceptable to the Executive Officer.
 - b. A corrective action self-monitoring program workplan proposal, designed to monitor and evaluate the success of the implemented corrected actions. The corrective action self-monitoring program shall monitor the success of the corrective actions until the approved habitat restoration activities have been successfully achieved, but not for a period of less than five years following completion of the corrective actions and not for a period of less than three years after any irrigation of revegetation plantings has ceased.
- Within sixty days of approval of the Corrective Action Workplan by the Executive Officer, the Discharger shall initiate implementation of the Corrective Action Workplan in accordance with the approved implementation time schedule.
- 3. No later than January 31 of each year following initiation of the corrective actions and continuing until the corrective actions are successfully achieved, the Discharger shall submit annual self-monitoring program reports, acceptable to the Executive Officer, describing the progress reached toward achieving the restoration activities' approved success criteria and performance standards.
 - 4. The Discharger shall submit with the final self-monitoring report a Notice of Completion, acceptable to the Executive Officer, demonstrating that the Corrective Action Workplan, as approved, has been successfully completed.
 - 5. If the Discharger is delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Discharger shall

promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order must be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.

6. Regional Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.
7. The technical reports and workplan proposals required under provisions 1, 2, 3, and 4 above shall be complete, accurate, and adequate, as determined by the Executive Officer.
8. No later than 14 days from the date of this Order, the Discharger is required to acknowledge in writing its intent to reimburse the State for cleanup oversight work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Discharger with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.
9. As described in finding 14 above, upon receipt of a billing statement for costs incurred pursuant to CWC section 13304, the Discharger shall reimburse the Regional Water Board.
10. None of the obligations imposed by this Order on the Discharger are intended to constitute a debt, damage claim, penalty, or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Regional Water Board or judicially by the Superior Court in accordance with CWC sections 13268, 13304, 13308, 13350 and/or 13385, and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Discharger to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Regional Water Board's ability to take appropriate enforcement action for the Discharger's violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements.



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB,
ou=Region 2,
email=bwolfe@waterboards.ca.gov, c=US
Date: 2015.09.11 14:32:03 -07'00'

Bruce H. Wolfe
Executive Officer

Date

ATTACHMENT 1

REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT

We have identified your facility or property as requiring regulatory cleanup oversight. Pursuant to the Porter-Cologne Water Quality Control Act, reasonable costs for such oversight can be recovered by the Regional Water Quality Control Board (Regional Water Board) from the responsible party. The purpose of this enclosure is to explain the oversight billing process structure.

Introduction

The Porter-Cologne Water Quality Control Act authorizes the State Water Resources Control Board (State Water Board) to set up Cost Recovery Programs. The Budget Act of 1993 authorized the State Water Board to establish a Cost Recovery Program for the Site Cleanup Program (SCP). The program is set up so that reasonable expenses incurred by the State Water Board and Regional Water Boards in overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely impacting the State's waters can be reimbursed by the responsible party. Reasonable expenses will be billed to responsible parties and collected by the Fee Coordinator at the State Water Board in the Division of Financial Assistance.

The Billing System

Each cost recovery account has a unique charge number assigned to it. Whenever any oversight work is done, the hours worked are charged to the account number on the employee's time sheet. The cost of the hours worked is calculated by the State Accounting System based on the employee's salary and benefit rate and the State Water Board overhead rate.

State Water Board and Regional Water Board administrative charges for work such as accounting, billing preparation, general program meetings and program specific training cannot be charged directly to an account. This work will be charged to administrative accounting codes. The Accounting Office totals these administrative charges for the billing period and distributes them back to all of the accounts based on the number of hours charged to each account during that billing period. These charges show as State Water Board Program Administrative Charges and Regional Water Board Program Administrative Charges on the Invoice.

The Overhead Charges are based on the number of labor hours charged to the account. The overhead charges consist of rent, utilities, travel, supplies, training, and personnel services. If there is no labor charged to the account during the billing period, there will be no overhead charges for that billing period with the exception of the last month of each fiscal year. This is due to the fact that the labor charges end June 30 for the current fiscal year. However, several kinds of overhead charges such as supply

orders and travel expenses are paid after the fiscal year ends. The State Water Board Accounting Office keeps track of these charges and distributes them back to all of the accounts based on the number of hours charged to each account for the whole fiscal year that has just ended. Therefore, the quarterly statements for the last month of the fiscal year could show no labor hours charged for the billing period, but some overhead charges could be charged to the account.

Invoices are issued quarterly, one quarter in arrears. If a balance is owed, a check is to be remitted to the State Water Board with the invoice remittance stub within 30 days after receipt of the invoice. The Accounting Office sends a report of payments to the Fee Coordinator on a quarterly basis.

Copies of the invoices are sent to the appropriate Regional Water Boards so that they are aware of the oversight work invoiced. Questions regarding the work performed should be directed toward your Regional Water Board project manager.

Daily Logs

A detailed description (daily log) of the actual work being done at each specific site is kept by each employee in the Regional Water Board who works on cleanup oversight at the property. This information is provided on the quarterly invoice using standardized work activity codes to describe the work performed. Upon request, a more detailed description of the work performed is available from the Regional Water Board staff.

Removal From The Billing System

After the cleanup is complete, the Regional Water Board will submit a closure form to the State Water Board to close the account. If a balance is due, the Fee Coordinator will send a final billing for the balance owed. The responsible party should then submit a check to the State Water Board to close the account.

Agreement

The responsible party of the property is required to acknowledge that he/she agrees to reimburse the State for appropriate cleanup oversight costs. You may wish to consult an attorney in this matter.

Regional Water Board Dispute Resolution

Based on the Regional Water Board's review and comment, the following section has been added as a San Francisco Bay Regional Water Board attachment to the SCP Cost Recovery Program's "Guide to the Billing Process" enclosure, "Reimbursement Process for Regulatory Oversight".

The Regional Water Board staff proposes to provide each responsible party (upon request) with daily logs of actual oversight work done and supporting accounting

information for the responsible party's site. If, upon the receipt of the billing statement, the responsible party disputes the amount due, the responsible party may follow the dispute resolution procedure described below. If the responsible party follows the procedure, the Regional Water Board will not initiate, except as noted, enforcement action for failure to reimburse the State Water Board. During this procedure, the responsible party is encouraged to confer with Regional Water Board staff at any time to discuss the areas in question and attempt to resolve the dispute.

1. The responsible party must notify the Regional Water Board in writing within 30 calendar days of receipt of the billing statement to indicate that it disputes the billing statement and requests a meeting with the Regional Water Board Assistant Executive Officer. This notification must indicate the specific areas of dispute and provide all appropriate support documentation. Upon completion of the meeting, the Assistant Executive Officer will provide a recommendation to the Regional Water Board Executive Officer on the dispute and recommend an amount due, based on documentation provided by both the responsible party and the Regional Water Board staff at the meeting. The Executive Officer will submit a written decision and resultant amount due to the responsible party and specify the new due date by which the resultant amount due must be paid to avoid enforcement action. This due date will be not less than ten working days from the date of the Executive Officer's written decision.
2. If, upon receipt of the Executive Officer's written decision, the responsible party still disputes the amount due and so notifies the Executive Officer by the new due date, the Executive Officer will schedule an appeal hearing of the decision before the Regional Water Board at the next appropriate monthly meeting. The Executive Officer may also consider recommending that the Regional Water Board take enforcement action for the responsible party's failure to pay the resultant amount due by the new due date if the Regional Water Board finds the responsible party's appeal without basis. Any amount due and not appealed to the Regional Water Board will be considered a violation of the Regional Water Board's order.

California Code of Regulations - Dispute Resolution

If a dispute regarding oversight charges cannot be resolved with the Regional Water Board, Section 13320 of the California Water Code provides an appeal process to Regional Water Board decisions. Regulations implementing Water Code Section 13320 are found in Title 23 of the California Code of Regulations, Section 2050.

ATTACHMENT 2

STATE WATER RESOURCES CONTROL BOARD			
SITE CLEANUP PROGRAM (SCP)			
BILLING COST EXPLANATION			
Fiscal Year 2015-2016			
Employee Salary and Benefit by Classification [1]		Salary/Benefits Range	
7500 - AEO CEA	\$ 9,017		\$ 20,132
4558 - Admin Officer II	\$ 6,920		\$ 8,598
5871 - Assistant Chief Counsel	\$ 13,372		\$ 15,488
5393 - Associate Governmental Program Analyst (Statewide)	\$ 6,588		\$ 8,246
5778 - Attorney	\$ 6,997		\$ 12,190
5795 - Attorney III	\$ 11,503		\$ 14,758
5780 - Attorney IV	\$ 13,016		\$ 16,314
4707 - Business Serv Asst (Spec)	\$ 3,736		\$ 5,717
3756 - Engineering Geologist (SWRCB)	\$ 6,817		\$ 12,833
0760 - Environmental Program Manager I (Managerial) (SWRCB)	\$ 14,225		\$ 16,154
0756 - Environmental Program Manager I (Supervisory) (SWRCB)	\$ 12,865		\$ 15,994
0769 - Environmental Program Manager II (SWRCB)	\$ 14,931		\$ 16,962
0762 - Environmental Scientist (SWRCB)	\$ 4,538		\$ 8,676
3843 - Exec Officer I	\$ 15,911		\$ 18,073
3842 - Exec Officer II	\$ 16,299		\$ 18,514
5601 - Information Officer I (Spec)	\$ 6,588		\$ 8,246
1419 - Key Data Operator	\$ 3,224		\$ 4,587
1282 - Legal Secretary	\$ 4,548		\$ 5,980
1441 - Office Assistant (General) (Statewide)	\$ 3,105		\$ 4,272
1379 - Office Assistant (Typing) (Statewide)	\$ 3,209		\$ 4,358
1138 - Office Technician (General) (Statewide)	\$ 3,950		\$ 4,948
1139 - Office Technician (Typing) (Statewide)	\$ 3,626		\$ 5,034
3851 - Principal Water Resources Control Engineer	\$ 15,523		\$ 17,632
5373 - Public Participation Specialist	\$ 6,588		\$ 8,246
3826 - Sanitary Engineering Associate (Statewide)	\$ 7,245		\$ 9,068
3782 - Sanitary Engineering Technician (Statewide)	\$ 4,989		\$ 7,171
3751 - Senior Engineering Geologist (Statewide)	\$ 12,015		\$ 15,038
0764 - Senior Environmental Scientist (SWRCB)	\$ 11,126		\$ 13,831
0765 - Senior Environmental Scientist (Spec)	\$ 8,031		\$ 9,989
3224 - Senior Legal Typist	\$ 3,877		\$ 5,420
3844 - Senior Water Resources Control Engineer (SWRCB)	\$ 12,015		\$ 15,038
5157 - Staff Services Analyst (General)	\$ 4,218		\$ 6,857
4800 - Staff Services Manager I	\$ 7,590		\$ 9,449
5815 - Supervising Attorney	\$ 11,508		\$ 14,626
3748 - Supervising Engineering Geologist (Statewide)	\$ 12,776		\$ 15,994
3849 - Supervising Water Resources Control Engineer (SWRCB)	\$ 12,776		\$ 15,994
3850 - Supervising Water Resources Control Engineer (MGR)	\$ 14,129		\$ 16,051
3846 - Water Resources Control Engineer (SWRCB)	\$ 6,817		\$ 12,767
Intermittent Employees:			
1120 - Seasonal Clerk	\$ 9.18/hr		\$10.35/hr
1931 - Scientific Aid	\$11.81/hr		\$14.01/hr
4871 - Student Assistant Engineering (Statewide)	\$11.78hr		\$18.16/hr

ATTACHMENT 2

Note: The State is currently in negotiations with the unions so the upper limits of these ranges may be subject to change.				
Operating Expenses and Equipment [2] (both State and Regional Board offices)				
Indirect Costs (Overhead = cost of doing business)	125%			
Billing Example				
Water Resources Control Engineer				
Salary and Benefits:	\$12,767			
Overhead (indirect costs):	\$15,959			
Total Cost per month	\$28,726			
Divided by 173 hours per month equals per hour:		\$166.05		
(Due to the various classifications that expend SCP resources an average of \$ 150.00 per hour can be used for projection purposes				
[1] The name and classification of employees performing oversight work will be listed on the invoice you receive.				
[2] The examples are estimates based on recent billings. Actual charges may be slightly higher or lower.				

ATTACHMENT 3

ACKNOWLEDGMENT OF RECEIPT OF OVERSIGHT COST REIMBURSEMENT ACCOUNT LETTER

I, John Sweeney, acting within the authority vested in me as an authorized representative of the property located at Point Buckler Island in Solano County, acknowledge that I have received and read a copy of the attached *REIMBURSEMENT PROCESS FOR REGULATORY OVERSIGHT* and the transmittal letter, dated September 10, 2015, concerning cost reimbursement for Regional Water Board staff costs involved with oversight of cleanup and abatement efforts at Point Buckler Island in Solano County.

I understand the reimbursement process and billing procedures as explained in the letter. I also understand that signing this form does not constitute any admission of liability. Billings for payment of oversight costs should be mailed to the following individual and address:

BILLING CONTACT _____

BILLING ADDRESS _____

TELEPHONE NO. _____

RESPONSIBLE PARTY'S SIGNATURE _____

(Signature)

(Title)

DATE: _____

EXHIBIT 4



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Wilson F. Wendt
wilson.wendt@msrlegal.com

September 18, 2015

**VIA EMAIL AGNES.FARRES@WATERBOARDS.CA.GOV AND OVERNIGHT
DELIVERY**

Bruce H. Wolfe
Executive Director
c/o Agnes Farres
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Cleanup and Abatement Order No. R2-2015-0038

Dear Mr. Wolfe:

As you know, Miller Starr Regalia represents John Sweeney, the managing member of the Point Buckler LLC. We are in receipt of Cleanup and Abatement Order No. R2-2015-0038 (the "CAO"), asserting that my client conducted unauthorized levee construction activities at Point Buckler Island.

We respectfully are requesting that the Regional Water Board schedule a hearing on the merits of the CAO. Pursuant to State Water Board Order No. WQ 86-13, pages 5 and 16, the State Water Board has provided that an alleged discharger may request an opportunity to be heard by the Regional Water Board, and that the Regional Water Board must maintain the flexibility to revise an order as further information, including information and arguments submitted by the alleged discharger, become available. This guidance is consistent with Water Code section 13307.1(b), which provides that the Regional Water Board "shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup ... and shall consider all input and recommendations from any responsible landowner wishing to participate."

We believe the record concerning the land use plans that govern the management of Point Buckler Island, and any work performed by Mr. Sweeney, has become confused. As you know, activities at Point Buckler have undergone review by various agencies in a piecemeal fashion, and no one agency has provided an opportunity to give this matter a comprehensive look in any formal setting. Accordingly, my client wishes to participate fully in the Regional Water Board's process, and we believe that an evidentiary hearing on the CAO before the Regional

PBJS\52236\979730.1

Bruce H. Wolfe
c/o Agnes Farres
September 18, 2015
Page 2

Water Board members would help clarify this record and provide the Regional Water Board and my client a forum to ask and answer questions about the issues at hand. If you could please respond to this request for a hearing by Wednesday, September 23, 2015, we would greatly appreciate it.

In the meantime, we reiterate our offer to come and meet with you and your staff to discuss this matter, an offer we originally made after receiving the Regional Water Board's notice of violation dated July 28, 2015. We understood that your staff would get back to us with a time that was convenient for them to meet, and so we were somewhat surprised to have received the CAO. Again, let me stress that we want to approach this in a cooperative fashion, and work out a solution that is satisfactory to you. If you ever have any questions or need information, please call me on my direct line, (925) 941-3217.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

Wilson F. Wendt

WFW:jj

cc: John Sweeney, john@spinnerisland.com
George "Bill" Speir, Esq., Miller Starr Regalia
Sean Marciniak, Esq., Miller Starr Regalia
U.S. Environmental Protection Agency
Bill Lee, lee.bill@epa.gov
Corps, SF Regulatory Branch
Katerina Galacatos, Katerina.Galacatos@usace.army.mil
Jane Hicks, jane.m.hicks@usace.army.mil
California Department of Fish and Wildlife
Jim Starr, Jim.Starr@wildlife.ca.gov
San Francisco Bay Conservation and Development Commission
Maggie Weber, maggie.weber@bcdcc.ca.gov

EXHIBIT 5

From: "Farres, Agnes@Waterboards" <Agnes.Farres@waterboards.ca.gov>
Subject: **RE: Cleanup and Abatement Order No. R2-2015-0038**
Date: September 23, 2015 at 3:27:16 PM PDT
To: Wilson Wendt <wilson.wendt@msrlegal.com>
Cc: "John Sweeny (john@spinnerisland.com) (john@spinnerisland.com)"
<john@spinnerisland.com>, Bill Speir <bill.speir@msrlegal.com>, Sean Marciniak
<sean.marciniak@msrlegal.com>, "lee.bill@epa.gov" <lee.bill@epa.gov>,
"Katerina.Galacatos@usace.army.mil" <Katerina.Galacatos@usace.army.mil>,
"Tori.White@usace.army.mil" <Tori.White@usace.army.mil>, "Starr, Jim@Wildlife"
<Jim.Starr@wildlife.ca.gov>, "Weber, Maggie@BCDC" <maggie.weber@bcdcc.ca.gov>,
"Hurley, Bill@Waterboards" <Bill.Hurley@waterboards.ca.gov>, "Lichten,
Keith@Waterboards" <Keith.Lichten@waterboards.ca.gov>, "Austin,
Tamarin@Waterboards" <Tamarin.Austin@waterboards.ca.gov>

Dear Mr. Wendt,

Thank you for contacting us regarding Cleanup and Abatement Order No. R2-2015-0038 (Order). We have discussed your request to schedule a hearing before our Board with our Executive Officer and counsel. We have determined that since there is no action to take before our Board at this time, it would be more appropriate to schedule a meeting with staff, including our Division Chief Keith Lichten, Board counsel Tamarin Austin, Section Leader Bill Hurley, and myself.

Our Executive Officer is open to revising the Order based on additional information we may receive. Indeed, the Order requires your client to submit a technical report providing us with additional information that will be helpful in getting an accurate understanding of the facts concerning this matter. In the interest of meeting the deadlines set out in the Order, we believe this is the most expeditious way to resolve this matter. Please let us know some dates and times you can be available to meet in the next few weeks.

Sincerely,

~~~~~

Agnes Farres  
SF Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
510.622.2401  
[Agnes.Farres@waterboards.ca.gov](mailto:Agnes.Farres@waterboards.ca.gov)

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**PROOF OF SERVICE**

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco, and my business address is 155 Sansome Street, Suite 700, San Francisco, California 94104.

On December 28, 2015, at San Francisco, California, I served the following document(s):

**DECLARATION OF JOHN D. SWEENEY IN SUPPORT OF EX PARTE APPLICATION**

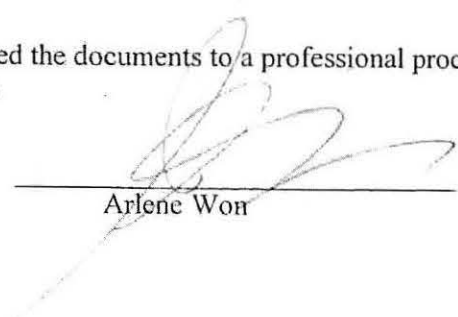
on the following parties:

Bruce H. Wolfe  
Executive Officer  
California Regional Water  
Quality Control Board, San  
Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Telephone: (510) 622-2300  
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☒ **BY HAND:** On the date written above, I provided the documents to a professional process server for service to the persons shown on the service list.

  
Arlene Won